

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JANET CHLENTZOS-WILLIAMS,

Plaintiff,

v.

BURIEN/KING COUNTY DISTRICT  
COURT,

Defendant.

Case No. 3:21-cv-05563-RJB

REPORT AND  
RECOMMENDATION DENYING  
PLAINTIFF'S APPLICATION TO  
PROCEED *IN FORMA PAUPERIS*

Noted for October 8, 2021

This case has been referred to Magistrate Judge Theresa L. Fricke pursuant to 28 U.S.C. § 636(b)(1) and Local Rule MJR 3 and 4. This matter comes before the Court on plaintiff's filing of an application to proceed *in forma pauperis*. Dkt. 1.<sup>1</sup> Because plaintiff's complaint fails to state a claim, it should be dismissed with leave to amend. In the alternative, if the Court determines the complaint states a claim for relief, IFP status should still be denied because plaintiff's application indicates she has sufficient income with which to pay the \$400.00 filing fee.

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963). A complaint is frivolous when it has no arguable

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<sup>1</sup> Plaintiff has also filed two other complaints and requests consolidation.

1 basis in law or fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984). A plaintiff  
2 is not entitled to submit an objection to the magistrate judge's report and  
3 recommendation that IFP status should be denied. *Minetti v. Port of Seattle*, 152  
4 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). Denial of a motion to proceed IFP is  
5 an immediately appealable order. *Tripati v. Rison*, 847 F.2d 548, 549 (9th Cir. 1988).

6 Before the Court may dismiss the complaint as frivolous or for failure to state a  
7 claim, though, the Court should normally give plaintiff notice of the deficiencies of his or  
8 her complaint and allow plaintiff to amend the complaint prior to dismissal. *Sparling v.*  
9 *Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988); *Noll v. Carlson*, 809 F.2d  
10 1446, 1449 (9th Cir. 1987). On the other hand, leave to amend need not be granted  
11 "where the amendment would be futile or where the amended complaint would be  
12 subject to dismissal." *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991) (citing  
13 *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir.1990); *Moore v. Kayport*  
14 *Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir.1989)). Moreover, the court need not  
15 grant endless amendments. *Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave to amend  
16 may properly be denied for "repeated failure to cure deficiencies by amendments  
17 previously allowed").

18 In this case, plaintiff alleges the King County District Court in Burien, Washington  
19 violated her civil rights. Dkt. 5, Amended Complaint. She asserts that monetary  
20 damages should be awarded because the clerk of the King County District Court  
21 refused to present four cases to the Judge of the District Court in Burien. *Id.* at 5.

22 Although King County may be sued for a civil rights violation under 42 U.S.C. §  
23 1983, to prove that a local government entity would be liable, a plaintiff must show the  
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1 local government entity itself violated their federal constitutional or statutory rights, or  
2 that it directed its employee(s) to do so. *Bd. of County Comm'rs of Bryan County v.*  
3 *Brown*, 520 U.S. 397, 404 (1994). A local governmental unit may not be held  
4 responsible for the acts of its employees under a respondeat superior theory of liability.  
5 *See Monell v. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978).

6 The focus of a civil rights complaint against a local government entity is on the  
7 "policy statement, ordinance, regulation, or decision officially adopted and promulgated  
8 by [the local government] Officers." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121  
9 (1988) (quoting *Monell*, 436 U.S. at 690). To sue a local governmental entity, a plaintiff  
10 must allege facts showing that any constitutional deprivation they suffered was the  
11 result of a custom or policy of the local governmental unit. *City of St. Louis v. Praprotnik*,  
12 at 121. Plaintiff would also need to show that a deliberate policy, custom, or practice of  
13 the local government was the moving force behind the constitutional violation that  
14 plaintiff suffered. *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1096 (9<sup>th</sup> Cir. 2013).  
15 Plaintiff's complaint contains no such allegations against King County. Dkt. 5.

16 In the alternative, if the Court finds that plaintiff's complaint should not be  
17 dismissed, she should be required to pay the filing fee. By requesting the court to  
18 proceed *in forma pauperis*, plaintiff is asking the government to incur the filing fee  
19 because she allegedly is unable to afford the costs necessary to proceed with his cause  
20 of action.

21 Plaintiff indicates she is receiving ongoing Social Security Disability Insurance  
22 Benefits, and retirement benefits. Dkt 1, Application for IFP, at 1.

1 Because plaintiff's complaint fails to state a claim, this Court should deny IFP and  
2 dismiss the Amended Complaint (Dkt. 5) with leave to amend.

3 In the alternative, because it is reasonable for plaintiff to incur the costs to  
4 proceed with this cause of action, the undersigned recommends that if the Amended  
5 Complaint is not dismissed, the Court should nevertheless deny the application to  
6 proceed *in forma pauperis*. Accordingly, the undersigned also recommends that the  
7 Court order plaintiff to pay the required filing fee **within thirty (30) days** of the Court's  
8 order, if the Amended Complaint is not dismissed.

9 Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is  
10 directed set this matter for consideration on **October 8, 2021**, as noted in the caption.

11 Dated this 29th day of September, 2021.

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14 Theresa L. Fricke  
15 United States Magistrate Judge  
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